

July 22, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Antidumping Changed Circumstances Review: Carbon and
Certain Alloy Steel Wire Rod from Mexico

SUBJECT: Issues and Decision Memorandum for Final Determination

I. Summary

On November 3, 2010, the Department of Commerce (the Department) published the Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Mexico, 75 FR 67685 (November 3, 2010) (Preliminary Results), in which the Department determined that ArcelorMittal Las Truchas S.A. de C.V. (AMLT) was the successor-in-interest to Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. (Sicartsa). We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s response to the issues raised in the briefs and recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this changed circumstances review (CCR) for which we received case brief and rebuttal comments from interested parties:

Comment 1: Date of Sicartsa’s Acquisition

Comment 2: Management

Comment 3: Supplier Base

Comment 4: Customer Base

Comment 5: Production Facilities

Comment 1: Date of Sicartsa's Acquisition

Nucor and Petitioners

Petitioners¹ argue that, when it makes successor-in-interest determinations, the Department will obtain information on a company's operation both before and after the assumption of control in order to allow it to compare whether there were significant changes to the company's structure and operations following the acquisition. According to petitioners, the Department initially instructed AMLT to provide information on its operations "prior to and after the name change," believing the date of the purported name change established both the date of acquisition and the change in control. Petitioners contend that the Department later issued a partial "clarification" specifying that AMLT provide information corresponding to April 2007 (the period in which ArcelorMittal acquired Sicartsa), and after March 2008 (the period in which Sicartsa changed its name to AMLT). See Memorandum to the File from Eric B. Greynolds dated October 7, 2010, at 1. Petitioners assert that the memorandum assumed certain dates as accurate based on AMLT's claims. However, petitioners argue that an analysis of the record demonstrates that Sicartsa was acquired prior to April 2007.

Petitioners claim that several months prior to April 2007, specifically on November 29, 2006, Sicartsa filed an application to change the name of the company to AMLT. See AMLT's September 19, 2010, submission at Attachment 3. Petitioners argue that the date of this name change application suggests that ArcelorMittal had assumed control of Sicartsa on or before November 29, 2006, because otherwise there would be no authority or basis for changing the name of the company from Sicartsa to AMLT.

Petitioners' further argue that, in a December 31, 2006, Form 20-F filing made with the Securities and Exchange Commission (SEC), Mittal Steel announced the acquisition of Sicartsa. Petitioners further argue that a December 31, 2007 SEC Form 20-F filing indicates that ArcelorMittal "finalized" the acquisition of Sicartsa on April 23, 2007. See Petitioners' case brief at 3 and 4. Petitioners contend that the December 31, 2006, SEC filing demonstrates that ArcelorMittal obtained effective control over Sicartsa at the point in which it began the Sicartsa acquisition (e.g., prior to April 2007) and not at the time in which it finalized the acquisition.

Petitioners further contend that a December 20, 2006, press release from ArcelorMittal announcing that it had acquired 100 percent in Sicartsa further supports their claim that ArcelorMittal obtained control of Sicartsa prior to April 2007. See Petitioners' November 1, 2010, Letter at Attachment 2.

In sum, petitioners' contend that AMLT has failed to provide sufficient information that would allow the Department to adequately examine the operations of the company prior to the actual dates of its name change and acquisition and, thus, on this basis the Department should reject AMLT's claim that it is the successor-in-interest to Sicartsa.

Respondent

AMLT explains that prior to Sicartsa's purchase it was owned by a member of Grupo Villacero. AMLT states that it is currently operated as a wholly-owned subsidiary of

¹ Gerdau Ameristeel US Inc. and Evraz Rocky Mountain Steel (petitioners).

ArcelorMittal (formerly known as Mittal Steel Company N.V.), a global steel producer incorporated and headquartered in Luxembourg. AMLT explains that ArcelorMittal's formation is the result of several mergers and subsequent name changes of Mittal Steel and Arcelor S.A. Between 2006 and 2007. AMLT explains that the first step of the merger process between Arcelor and Mittal was completed on September 2007; and the second step was finalized and became effective November 13, 2007. See ArcelorMittal 2007 Annual Report, Form 20-F, Exhibit 1 to AMLT's September 10, 2010 submission. AMLT notes that as part of the merger process, but prior to the completion of the two-step merger process, ArcelorMittal acquired one hundred percent of the assets and interests of Sicartsa via a share purchase. AMLT states that the date of share purchase was April 20, 2007. See Exhibit 2 to AMLT's September 10, 2010, submission. AMLT notes that Sicartsa continued to operate under its own name even after the completion of the acquisition. AMLT states that a request for corporate name change authorization was submitted to the Permits Department of the General Department of Legal Affairs of the Mexican Ministry of Foreign Affairs on or around February 6, 2008, and the request was granted on February 11, 2008. See Name Change Authorization, Exhibit 4 to AMLT's October 18, 2010, Response to Changed Circumstances Review Questionnaire. AMLT states that a corporate name change was approved via a resolution at a General Extraordinary Shareholder's Meeting on February 25, 2008, and formalized by a notary public as required by Mexican law. AMLT further states that for tax and invoicing purposes the name change took place in February 2009. See Certification and Shareholder Approval of Name Change, Exhibit 3 to AMLT's September 10, 2010, submission.

According to AMLT, the transaction at issue in this changed circumstances review is a stock purchase, rather than an asset purchase. According to AMLT, in the case of an asset purchase the buyer must either create a new entity or use another existing entity for the transaction. AMLT further argues that for asset purchases only assets and liabilities which are specifically indentified in the purchase agreement are transferred to the buyer while all of the other assets and liabilities remain with the existing business and thereby the seller. AMLT argues that asset purchase transactions are generally more complicated, as ownership of the assets and liabilities and any related contracts must actually be transferred, sometimes through the filing of documents with governmental offices. AMLT further explains that from an accounting perspective, asset purchases require the buyer to record the assets and liabilities at the fair market value assigned to them as part of the transaction. Thus, argues AMLT, stock purchases, where the seller retains ownership of the share of the stock of the business, are less conducive to a successor-in-interest finding.

AMLT contrasts an asset purchase with a stock purchase. In a stock purchase, all of the outstanding shares of stock of the business are transferred from the seller to the buyer. The buyer in effect steps into the shoes of the seller at the time of purchase, and the business operations continue in an uninterrupted manner. Unless specifically agreed to, the seller has no continuing interest in, or obligation with respect to the assets, liabilities or operations of the business. AMLT contends that, from an accounting perspective, the business's assets and liabilities are not adjusted rather they continue to be carried and/or depreciated in the same manner as before the transaction. As such, contends AMLT, a stock purchase, such as the one involving Sicartsa, represents a pure successor transaction.

AMLT further argues that petitioners' argument regarding the date of Sicartsa's name change is based on a misrepresentation of fact. According to AMLT, petitioners allege that

several months prior to April 2007, specifically on November 29, 2006, Sicartsa filed an application to change the name of the company to AMLT. However AMLT argues that the date November 29, 2006, relates to the date on which authority to grant name changes was delegated to public officers of the Ministry of Foreign Affairs. In support of its argument, AMLT cites to its November 15, 2010, filing, in which it explained the November 29, 2006, filing date as follows:

The November 29, 2006, date mentioned on the document referred to above is unrelated to the name change request; rather, it relates to the date on which authority to grant name changes was delegated to public officers of the Ministry of Foreign Affairs. See Exhibit 4 to AMLT's October 18, 2010, submission. See AMLT's Response to Second Supplemental Questionnaire at 2.

In the same submission AMLT further explained that:

From the time that Mittal Steel acquired a 100 percent ownership in Sicartsa on April 20, 2007, until February 25, 2008, the business continued to operation [sic] under Sicartsa's name. A request for authorization to change the name was submitted approximately on February 6, 2008, to the Permits Department of the General Department of Legal Affairs in the Mexican Ministry of Foreign Affairs. Authorization for this name change was granted on February 11, 2008.

See AMLT's November 15, 2010, Response to Second Supplemental Questionnaire at 2. AMLT asserts that this evidence demonstrates that Sicartsa did not file an application to change the name of the company to AMLT on November 26, 2006, and as such, the Department should dismiss any arguments based on such an unfounded notion.

AMLT contends that petitioners' statements regarding Mittal Steel's purported December 31, 2006, filings with the SEC are factually inaccurate because petitioners improperly reference the closing date of AMLT's financial statements as the date on which AMLT made its SEC filing. AMLT states that, in fact, the date of the SEC filing was not December 31, 2006, but rather April 17, 2007, as noted by Mittal Steel's auditors.

AMLT also challenges petitioners' claims that a December 20, 2006, press release from ArcelorMittal indicates that it effectively obtained control over Sicartsa prior to April 2007. AMLT argues that the petitioners reference the announcement out of context. AMLT argues that a note to Mittal's financial statement for calendar year 2006 references the December 20, 2006 announcement and explains that, while the acquisition of Sicartsa was announced at the end of 2006, "the closing of this transaction is expected during the in the second quarter of 2007 {sic}." See AMLT's Rebuttal Brief at 5. AMLT asserts that this statement from its financial statement makes it clear that the purchase of Sicartsa occurred in the second quarter of 2007, not before. Thus, AMLT argues that the information the SEC filing and its financial statements support AMLT's prior statements that ArcelorMittal acquired Sicartsa via a share transaction on April 20, 2007.

Department's Position: In the Preliminary Results, the Department found that ArcelorMittal acquired Sicartsa on April 20, 2007. In reaching this determination, the Department relied upon the following evidence:

(1) An excerpt of the ArcelorMittal 2007 Annual Report indicating that ArcelorMittal acquired 100 percent interest of Sicartsa prior to Sicartsa's name change; (2) Sicartsa's Stock Register indicating the completion of ArcelorMittal's acquisition of Sicartsa; (3) Notary Public Office No. 18 Federal District, Mexico certifying that Sicartsa changed its name to AMLT; (4) the articles of amendment that reflect the name change; and (5) a copy of an extraordinary shareholder's meeting approving the name change. See Preliminary Results at 67,687 and AMLT's September 10, 2010 response at Attachment 1, page 19.

Arguments from petitioners have not led us to alter this conclusion. Specifically, we reject petitioners' claim that Sicartsa effectively changed its name in November 2006 thereby suggesting that ArcelorMittal assumed control of Sicartsa prior to April 20, 2007. Rather, the record evidence indicates that November 29, 2006, was the date in which the authority to grant name changes was delegated to public officers of the Ministry of Foreign Affairs, not an application by AMLT. See AMLT's Response to Second Supplemental Questionnaire at 2. We further find that the request to change Sicartsa's name to AMLT was filed on February 6, 2008, almost a year after ArcelorMittal acquired one hundred percent of Sicartsa's shares. See AMLT's November 15, 2010, second supplemental questionnaire response at 2.

Similarly the Department rejects petitioners' argument that SEC filings demonstrate that ArcelorMittal acquired control over Sicartsa prior to 2007. As an initial matter, we find that record evidence indicates that Mittal submitted its SEC filing covering calendar year 2006 in April 2007 and not on December 31, 2006, as implied by petitioners. Further, we do not find persuasive petitioners' argument that this SEC filing demonstrates that Mittal acquired effective control of Sicarsa prior to April 20, 2007. As explained above, Sicartsa's Stock Register indicates that ArcelorMittal did not acquire Sicartsa's shares until April 20, 2007, and thus, it did not have the means to control Sicartsa prior to that date. Therefore, we find that petitioners' claims that ArcelorMittal had effective control over Sicarsta prior to April 20, 2007, are without merit.

We also disagree that a December 2006 announcement demonstrates that Sicartsa's change-in-ownership occurred prior to April 2007. While Mittal's financial statements for 2006 reference the December 2006 announcement of Mittal's acquisition of Sicartsa, they go on to state that the "closing of this transaction is expected during the second quarter of 2007." See AMLT's Rebuttal Brief at 5. Mittal's financial statement for 2006 indicating that the acquisition of Sicartsa was completed in the second quarter of 2007 is consistent with AMLT's statements in the instant CCR that ArcelorMittal acquired Sicartsa on April 20, 2007.

In conclusion, we find that AMLT properly reported the date on which control of Sicartsa changed hands. We therefore reject petitioners' arguments that the Department lacks the necessary information to examine the operations of Sicartsa and AMLT before and after the assumption of control for purposes of its successor-in-interest analysis.

Comment 2: Management

Nucor and Petitioners

Nucor argues that when making a successor-in-interest determination, the Department typically examines whether acquisition of a company results in changes to the composition of the acquired company's senior management. See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 71 FR 2189, 2190-91 (January 13, 2006) (Lumber from Canada Preliminary Results); unchanged in Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 71 FR 13811 (March 17, 2006) (Lumber from Canada Final Results), and accompanying Issues and Decision Memorandum (Lumber from Canada Final Results Decision Memorandum). Nucor claims that significant changes in the acquired company's top management have been sufficient to yield a negative successor-in-interest determination. Nucor cites Bearings from the PRC Preliminary Results as an example of when the Department found that because the acquiring company had "replaced and restructured the company's top management," it had demonstrated that the company's operations and production decisions are distinct from the management and operations prior to acquisition. See Tapered Roller Bearing and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2008 – 2009 Administrative Review of the Antidumping Duty Order, 75 FR 41148, 41152 (July 15, 2010) (Bearings from the PRC Preliminary Results); unchanged in Tapered Roller Bearing and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of the 2008 – 2009 Administrative Review of the Antidumping Duty Order, 76 FR 3086, 3087 (January 19, 2011) (Bearings from the PRC Final Results). Similarly, according to Nucor in ORT from the PRC Preliminary Results the Department based its negative successor-in-interest determination on the fact that no executive-level managers remained post-acquisition. See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Changed Circumstances Review, 75 FR 32376 (June 8, 2010) (ORT from the PRC Preliminary Results); unchanged in Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Changed Circumstances Review, 75 FR 46914 (August 4, 2010) (ORT from the PRC Final Results). Nucor argues that, consistent with its findings in these three CCR proceedings, the Department should deny AMLT's changed circumstance request.

Nucor contends that from the period from April 2007 (when Sicartsa was purportedly formally acquired by Arcelor Mittal) to April 2008 (after Sicartsa's name was changed to AMLT) three out of the four members of Sicartsa's senior management were replaced. Nucor further argues that, subsequent to April 2008, the last remaining pre-acquisition member of senior management, the Chief Technical Officer, was also replaced. See AMLT's October 18, 2010, Initial Questionnaire Response at Exhibit 1. Therefore Nucor argues that by September 2010, the entire senior management group from Sicartsa had been replaced, and no pre-acquisition Sicartsa senior managers remained as senior managers of AMLT. Nucor argues that the composition of AMLT's upper level management is not reflective of pre-acquisition Sicartsa, indicating that AMLT's operations and production decisions are distinct from the management and operations of Sicartsa. On this basis Nucor argues that AMLT cannot be considered Sicartsa's successor-in-interest.

Petitioners contend that a review of the board of directors for AMLT demonstrates that Mittal controlled Sicartsa prior to April 2007, and that the record of the instant changed circumstances review therefore does not contain the necessary information that would allow the Department to compare the composition of Sicartsa's senior management before and after the acquisition. Specifically, petitioners claim that publicly available information from the Internet indicates that at least four of the seven individuals that AMLT identified as board members were on the Board of Directors of Mittal before and after the purported April 20, 2007, share transfer. For example, according to petitioners, AMLT identified Mr. Venkataramanan as a member of the board of directors in 2007 and as the CEO of AMLT in April 2008. However, petitioners argue that the employment history of Mr. Venkataramanan demonstrates that Mittal had control of Sicartsa prior to the share transfer that purportedly occurred in April 2007. Petitioners argue that Mr. Venkataramanan was appointed CEO of Mittal's Mexican subsidiary Lazaro Cardenas in May 2005 and that he has worked for Mittal since 1993. See Petitioners' November 1, 2010, Letter at Attachment 3. Thus, according to petitioners, this information demonstrates that Mr. Venkataramanan was an employee of Mittal at the time he sat on the board of Sicartsa. Moreover, Mr. Venkataramanan's presence on Sicartsa's board further demonstrates that AMLT has not provided sufficient information with regard to the actual date on which Mittal acquired control of Sicartsa. Based on this omission, petitioners argue that the Department should reject AMLT's successor-in-interest claim.

Similarly, petitioners highlight the chairman's message from Mittal Steel's 2004 annual report wherein Malay Mukherjee is identified as the chief operating officer of Mittal Steel and Fernando Ruiz as a board member for Mittal Steel USA. See Petitioners' November 1, 2010, letter at Attachment 4. Yet, according to petitioners, AMLT identifies these two individuals as members of the board of directors in April 2007, which is the period the Department assumed that the company was controlled by Sicartsa. See Petitioners' November 1, 2010, Letter at Attachment 5. According to petitioners, these statements indicate that Mittal had assumed control of Sicartsa's operation by November 29, 2006, and that it only "finalized" or "completed" the takeover in April 2007.

Petitioners note that AMLT submitted information on the identity of its ERO, COO, CFO and CTO, its customers, and its suppliers on April 2007, April 2008 and September 2010. See AMLT's October 19, 2010, Questionnaire Response at Exhibits 1 and 5-10. However, for the reasons stated above, petitioners argue that this information is not appropriate because it does not provide for a comparison of the management or board members in the period before Mittal assumed control of Sicartsa.

Petitioners further argue that AMLT provided no information on the senior managers in charge of production operations, purchasing, sales, and marketing activities. See AMLT October 19, 2010 QR at Exhibit 1. According to petitioners, AMLT submitted one page that listed only the names of the CEO, CFO, COO and CTO in April 2007, 2008 and September 2010. See AMLT October 19, 2010 QR at Exhibit 1. Petitioners argue that AMLT provided no information on the employment history of these executives and failed to identify and provide employment history of the senior managers. Petitioners note that even AMLT's partial list confirms that all of the individuals that were in these positions in April 2007 have been subsequently replaced. Thus petitioners conclude these facts support their assertion that the Sicartsa appointed management in place in April 2007 has been replaced by AMLT and demonstrates that AMLT is not the successor-in-interest to Sicartsa.

Petitioners further argue that the information AMLT managed to submit on its board members reflected unspecified dates of service in 2007, 2008 and 2010 and, therefore, the record does not identify or provide any information on the Board of Directors prior to ArcelorMittal's acquisition of Sicartsa.

Respondent

AMLT contends that the name change and acquisition by ArcelorMittal did not affect the company's management, sales operations, supplier relationships or customer base in a meaningful way. The evidence that AMLT provides to support this assertion is (1) an excerpt of the ArcelorMittal 2007 Annual Report indicating that ArcelorMittal acquired 100 percent interest of Sicartsa prior to Sicartsa's name change; (2) Sicartsa's Stock Register indicating the completion of ArcelorMittal acquisition of Sicartsa; (3) Certification from Notary Public Office No. 18 Federal District, Mexico confirming the Sicartsa changed its name to AMLT; (4) the articles of amendment that reflect the name change; and (5) a copy of an extraordinary shareholders' meeting approving the name change. Finally, AMLT references a list of board members and senior managers of ALMT/Sicartsa for 2007, 2008, and 2010, which it argues demonstrates that the company's senior management remained largely unchanged. See AMLT's October 18, 2010, submission at Exhibit 1.

Department's Position: We disagree with petitioners that the Department's approach in Lumber from Canada Preliminary Results should lead us to issue a negative successor-in-interest claim in the instant CCR. In Lumber from Canada Preliminary Results, the Department, in keeping with its practice, examined the extent to which changes in senior management occurred as a result of respondent's purchase of a competing Canadian firm. See Lumber from Canada Preliminary Results, 71 FR at 2191. In that particular case, the Department found that the respondent's senior management did not change significantly as a result of its acquisition. Id. However, it is incorrect to imply that Lumber from Canada Preliminary Results stands for the proposition that respondents must demonstrate that senior management remained unchanged in order for the Department to reach an affirmative successor-in-interest determination. In Lumber from Canada Preliminary Results, the Department states that it will examine whether, "the changes in respondent's personnel are well within the normal range of personnel changes that one would expect over time within the same operation." Id. Further, in Lumber from Canada Preliminary Results the Department explains that in conducting CCR determinations, it will consider how respondent's operations "as a whole" have changed. Id.

We also disagree with petitioners that the Department's finding in Bearings from the PRC Preliminary Results and ORT from the PRC Preliminary Results should compel the Department to make a negative successor-in-interest determination in the instant CCR. In Bearings from the PRC Preliminary Results, the Department based its negative finding on the fact that the respondent significantly changed its senior management and replaced its board of directors. See Bearings from the PRC Preliminary Results, 75 FR at 41152. In addition, the Department found that the respondent had significantly expanded its production capabilities by acquiring two nearby affiliated business entities. Id. In ORT from the PRC Preliminary Results, in making its negative successor-in-interest determination, the Department found that none of the respondent's executive level management remained after the change in ownership. See ORT

from the PRC Preliminary Results, 75 FR at 32377. The Department further explained that, after the change in ownership the respondent's new owner held two-thirds control of respondent's board of directors. Id. In ORT from the PRC Preliminary Results, the Department also found that respondent's corporate/operational structure, as well as its sales and marketing operations, underwent significant changes as a result of the change in ownership. Id. The facts encountered in Bearings from the PRC Preliminary Results and ORT from the PRC Preliminary Results are distinct from those of the instant CCR. As discussed below, Sicartsa/AMLT did not experience turnover in its board of directors. And, as discussed in Comment 5 below, we find that the production facilities of Sicartsa remained essentially the same after its acquisition by ArcelorMittal. Further, no evidence has been presented indicating that the sales and marketing operations of Sicartsa/AMLT changed as a result of its acquisition by ArcelorMittal.

Furthermore, while the Department typically examines changes in management as part of its successor-in-interest analysis, it is but one of several factors considered by the Department. Under the Department's practice, no single factor "will necessarily be dispositive" for purposes of the successor-in-interest analysis. See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944, 6945 (February 14, 1994) (IPA from Israel), and Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 70 FR 22847, 22848 (May 3, 2005). Rather, taking into account all of the factors typically considered (e.g., (1) management; (2) production facilities; (3) supplier relationships, and (4) customer base), the Department will determine whether the resulting operations are essentially the same at the predecessor company. See IPA from Israel, 59 FR at 6945.

As noted in the Preliminary Results, the company experienced some turnover in senior management positions in 2007, 2008, and 2010. See Preliminary Results, 75 FR at 67687. However, we disagree with Nucor that the turnover in senior management at Sicartsa/AMLT constitutes a wholesale change in senior leadership outside of one's normal expectations that should lead to a negative successor-in-interest finding. For example, Nucor fails to mention that the board of directors of Sicartsa/AMLT was the same prior to and after the formal acquisition date. In fact, record evidence shows that the board of Sicartsa/AMLT remained unchanged through September 2010. Id.; see also AMLT's October 18, 2010, response at Exhibit 1, which lists the board members of Sicartsa/AMLT in 2007, 2008, and 2010. On this point, we note that in Lumber from Canada Final Results, the Department cited to the lack of turnover in the respondents' board of directors as a basis for finding that the respondent fulfilled the management criteria of the Department's successor-in-interest analysis. See Lumber from Canada Final Results Decision Memorandum at 7. Thus, we find that changes to Sicartsa's senior management, coupled with the lack of turnover in the board of directors of Sicartsa/AMLT, are within the normal range of personnel changes that one would expect over time.

Comment 3: Supplier Base

Nucor and Petitioners

Nucor argues that in analyzing successor-in-interest for the purpose of antidumping law, the Department examines whether acquisition of a company results in changes to supplier

relationships. See Lumber from Canada Preliminary Results, 71 FR at 2190-91. Nucor contends that the record does not support the Department's preliminary finding that "the suppliers for Sicartsa and AMLT, while not identical, overlap during the relevant time period to a degree that provides support for consistency in supplier base." See Preliminary Results, 75 FR at 67687. Nucor explains that in AMLT's initial questionnaire response it provided a list of Sicartsa's suppliers in April 2007, April 2008 (purportedly after the acquisition and name change), and September 2010 (when respondent's request for a changed circumstances review was filed). See AMLT's Initial Questionnaire Response at Exhibits 8-10. Nucor argues that a comparison of the three lists demonstrates that the acquisition resulted in more than a "minor supplier turnover," as characterized by AMLT. Rather, the evidence demonstrates that AMLT replaced the majority of Sicartsa's suppliers. See Memorandum to the File from Eric B. Greynolds, "Analysis of Supplier and Customer Data" (October 25, 2010) (Supplier and Customer Memorandum) at 6.

Nucor further argues that the number of Sicartsa's suppliers AMLT replaced was substantial and, with the exception of a few minor overlaps, does not resemble its predecessor. Therefore, Nucor argues that AMLT suppliers are not the same or similar to those that Sicartsa had prior to the acquisition. Nucor argues that this type of change in AMLT's supplier base cannot be considered a change normally associated with business expansion and should only be characterized as different and distinct company.

Respondent

AMLT argues that it has demonstrated sufficient overlap of suppliers between April 2007 and October 2010 to support Commerce's affirmative successor-in-interest determination in the Preliminary Results. AMLT argues that petitioners' analysis of the supplier data is flawed due to their practice of treating one supplier name ending in a period and the identical supplier name not ending in a period as two distinct companies. In essence, argues AMLT, petitioners attempt to create two distinct entities out of nothing more than trifling spelling and punctuation differences that exist in the supplier data. AMLT argues that, after correcting for these minor differences in names, the record demonstrates that there was significant supplier overlap between Sicartsa and AMLT.

Department's Position: As an initial matter, we note that petitioners rely on slight differences in the spelling and punctuation of supplier names in the Supplier and Customer Data Memorandum to claim that particular suppliers are not one-in-the same and, thus, that there is insufficient overlap in the supplier data supplied by AMLT. We find that this analysis is flawed.

We also disagree with Nucor that the data in the Supplier and Customer Memorandum demonstrates that Sicartsa/AMLT experienced more than minor supplier turnover. As noted in the Preliminary Results, while the suppliers for Sicartsa and AMLT are not identical, there is overlap during the relevant time period to a degree that provides support for consistency in supplier base. See AMLT's October 18, 2010, questionnaire response at Exhibits 8, 9, and 10 and the Supplier and Customer Memorandum. For example, the data in the Supplier and Customer Memorandum indicate that Sicartsa/AMLT retained a majority of its suppliers in the

year after Sicartsa was acquired by ArcelorMittal.² See the Supplier and Customer Memorandum, Attachment II at 6.

Comment 4: Customer Base

Nucor and Petitioners

Nucor argues that in making a successor-in-interest determination, a successor firm's customer base is probative. See, e.g., Lumber from Canada Preliminary Results, 71 FR at 2190-91. According to Nucor, the Department will make a negative successor-in-interest finding if it determines that the customer base of the respondent, post-acquisition, does not resemble the respondent's pre-acquisition customer base. See, e.g., ORT from the PRC Preliminary Results, 75 FR at 32378. Nucor contends that data in the Supplier and Customer Memorandum indicate that the customer base of Sicartsa/AMLT changed significantly the year after Sicartsa's acquisition. Nucor further argues that an even fewer of number of Sicartsa's pre-acquisition customers remained as of 2010.³

Respondents

AMLT argues that its customer base has not undergone significant changes following the acquisition of Sicartsa. AMLT argues that the Department's focus in successor-in-interest determinations is on the similarity to the customer base prior to and after the acquisition. See Lumber from Canada Preliminary Results, 71 FR at 2191. AMLT further argues that the Department has also included a sales volume analysis in determining the "strong similarity" between pre-acquisition and post-acquisition customers. Id. This legal standard contrasts with petitioners' focus on the number of customers, irrespective of the number of sales to that customer. AMLT contends that when the sales volumes of the pre-and post acquisition customers is reviewed, the "strong similarity" of the customer bases of Sicartsa and AMLT is readily apparent. See AMLT's October 18, 2010 Supplemental Response at Exhibit 8. On this point, AMLT notes that all but two of its 2010 high volume customers were also high volume customers of Sicartsa in 2007. Id.

Department's Position: In the Preliminary Results, the Department noted that the customer base of Sicartsa/AMLT overlapped in 2007, 2008 and 2010. See Preliminary Results, 75 FR at 67687. Our conclusion in this regard remains unchanged. Contrary to Nucor's claim, the proprietary data contained in the Supplier and Customer Memorandum support the Department's finding in the Preliminary Results. Sicartsa/AMLT retained a significant majority of its customers in the year after Sicartsa's acquisition. See Supplier and Customer Memorandum, Attachment I at 2.

² The data in the Supplier and Customer Memorandum are proprietary and, thus, the exact percentage of suppliers that remained after Sicartsa's acquisition cannot be revealed in the public domain.

³ As noted above, the data in the Supplier and Customer Memorandum are proprietary and, therefore, the exact percentages cannot be revealed in the public domain.

Furthermore, as of 2010, Sicartsa had retained a majority of its pre-acquisition customer base. Id.

The data in the Supplier and Customer Memorandum do not contain sales volume information. However, the data contains the number of invoices issued to each customer during 2007, 2008, and 2010, which we find may serve as a reasonable proxy for sales volume. Using the data in this manner, we find that in 2010 the vast majority of AMLT's invoices were issued to customers that were also customers of Sicartsa in 2007. See Supplier and Customer Memorandum, Attachment I at 1 - 2. On this basis, we find that there was sufficient overlap in the customer of base of Sicartsa/AMLT after the acquisition.

Comment 5: Production Facilities

Nucor and Petitioners

Nucor and petitioners argue that while AMLT has claimed its production facilities “are essentially the same as those of Sicartsa,” AMLT has failed to develop a sufficient record regarding its production facilities, which according to Nucor has changed significantly post-acquisition. Nucor explains that in the Preliminary Results, the Department found that AMLT's production operations remained the same post-acquisition, as evidenced “through business licenses, utility bills and invoices.” See Preliminary Results, 75 FR at 67687. Nucor and petitioners contend that the record demonstrates otherwise. According to Nucor and petitioners, AMLT's brief description of its own facilities; its mailing address, and telephone number does not provide any information that would allow the Department to assess whether AMLT made changes to the production or purchasing operations of Sicartsa.

Nucor and petitioners contend that in prior determinations the Department has instead requested respondents submit both pre- and post-acquisition product catalogues, price lists and sales histories, in order to allow for a comparison of the company's production facilities both prior to and after acquisition. Petitioners further argue that the submission of business licenses, utility bills, and invoices merely show that a building remained in the same location, but that such information does not address whether any changes occurred with regard to production operations or equipment usage during a given period.

Nucor further claims that the differences in AMLT's suppliers indicate that there were significant changes in production and/or operations after the acquisition. Nucor claims that the nature of this change is unclear because AMLT failed to develop any evidence that it did not make changes to Sicartsa's production facilities or product line post-acquisition. Thus, according to Nucor, the Department has no basis on which to make an affirmative successor-in-interest determination and should therefore determine that AMLT has not established that it is the successor-in-interest to Sicartsa. On this point, Nucor argues that the Department has made negative successor-in-interest determinations in instances in which it has found that a respondent has not submitted sufficient information. See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan, 69 FR 61796, 61798. (October 21, 2004) (Polychloroprene from Japan Preliminary Results); unchanged in Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan, 69 FR 67890 (November 22, 2004) (Polychloroprene Rubber from Japan Final Results).

Respondents

As an initial matter, AMLT takes issue with the tacit assertion that “essentially” is an insufficient evidentiary standard for the Department’s successor-in-interest determinations. AMLT cites to several cases in which the Department has made affirmative successor-in-interest determinations based on the fact that the predecessor and successor were “essentially” the same. See, e.g., Ball Bearings and Parts Thereof from France: Preliminary Results of Changed Circumstances Review, 74 FR 60242, 60243 (November 20, 2009) (Bearings from France).

AMLT argues that it submitted several items of evidence to support the fact that its production facilities have not changed, including its business licenses, utility bills and invoices that were submitted on the record. AMLT argues that it, like Sircasta before it, is a manufacturer of long steel products, including wire rod. AMLT states that it has undergone no expansions nor has it imposed any other similar, significant changes since the stock purchase acquisition of Sicartsa.

AMLT states that, like Sicartsa, it is a fully integrated producer of long steel. AMLT states that it is located in Lazar, Cardenas, Michocan, Mexico, with additional facilities elsewhere in Mexico. AMLT states that it has an annual production capacity of up to 1.7 million ton of finished products and 1.8 million ton of liquid steel. AMLT further states that its integrated steel making complex at Lazaro Cardenas includes an iron ore mine, concentrating plant, a pelletizing plant, a coke ovens battery, a blast furnace, an oxy-cupola furnace, basic oxygen converters, continuous billet casters, rebar rolling mills, a wire rod rolling mill and port facilities. AMLT states that it also has industrial service facilities, including a power plant, a stream plant, and a lime plant. AMLT asserts that each of these facilities was operated by its predecessor, Sicartsa.

AMLT states that its other Mexican industrial facilities are in Cordoba, Celaya, and Tultilan. AMLT asserts that each of these facilities was operated by Sicartsa prior to the acquisition and name change.

AMLT argues that Polychloroprene Rubber from Japan Preliminary Results has nothing to do with the evidentiary standard of changed circumstances reviews. Instead, argues AMLT, the Department based its negative determination decision in Polychloroprene Rubber from Japan Preliminary Results on the nature of the transaction, not on the lack of sufficient evidence. See Polychloroprene from Japan Preliminary Results, 69 FR at 61799. As to the evidence at issue in the instant changed circumstance review, AMLT argues that not only did it provide sufficient evidence concerning its production facilities but that the Department verified the information in prior administrative reviews.

Department’s Position: We find that AMLT has provided sufficient information regarding the production facilities of Sircasta and AMLT and, as noted in the Preliminary Results, the production operations of Sicartsa and AMLT essentially remained the same during the 2007, 2008, and 2010 time periods. For example, sales invoices supplied by AMLT demonstrate that Sicarsta/AMLT produced wire rod before and after the acquisition. See AMLT’s October 18, 2010, questionnaire response at Exhibit 2. Further, SEC filings by ArcelorMittal indicate that Sicartsa/AMLT remained in the same location before and after the acquisition. Id. at Exhibit 3.

In addition, ArcelorMittal purchased Sicartsa via a share transfer, indicating that Sicartsa (including all of its production facilities) were included as part of the purchase. See AMLT's September 10, 2010, response at Attachment 2. This fact supports our finding that Sicartsa's production facilities remained essentially the same after the acquisition. Moreover, Sicartsa participated in the 2003-2004 administrative review, which demonstrates that it produced subject merchandise prior to its acquisition. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico, 71 FR 27989 (May 15, 2006). Further, ArcelorMittal's SEC Form 20-F filing covering calendar year 2007 indicates that Sicartsa produced wire rod throughout 2007, which indicates that Sicartsa continued to produce wire rod after the acquisition. See AMLT's September 10, 2010, submission, Attachment 1 at 19.

We acknowledge that AMLT did not submit product catalogues or price lists. However, we find that the invoice and address information submitted by AMLT, combined with our conclusion that the suppliers and customers of Sicartsa/AMLT largely overlapped before and after the acquisition, Sicartsa's participation in prior administrative reviews, and information indicating that Sicartsa continued to produce wire rod throughout 2007, demonstrate that the production facilities of Sicarsta/AMLT remained essentially the same.⁴

We further find that the facts concerning Polychloroprene Rubber from Japan Preliminary Results do not compel the Department to make a negative successor-in-interest determination in the instant CCR. In Polychloroprene Rubber from Japan Preliminary Results, the Department based its negative successor-in-interest finding on the fact that management, corporate structure, selling and marketing operations, customer base, and pricing structure of the respondent were significantly different from those of its successor. See Polychloroprene from Japan Preliminary Results, 69 FR at 61719. In the instant CCR we have no such dissimilarities. Rather, as explained above, we have found that the senior leadership, supplier and customer base, and production facilities of Sicartsa/AMLT remained essentially the same before and after the acquisition.

⁴ As explained in Comment 3, we find that Sicartsa/AMLT submitted information indicating an overlap in suppliers before and after the acquisition. As such, we disagree with Nucor's claim that there are differences in the supplier data that suggest changes to the production facilities of Sicartsa/AMLT after the purchase by ArcelorMittal.

Recommendation

After taking into account such factors as 1) acquisition timeline, 2) management, 3) supplier base, 4) customer base, and 5) production facilities, we find that the operations of AMLT are essentially the same as Sicartsa. Therefore, we recommend finding that AMLT is the successor-in-interest to Sicartsa and, therefore, should be afforded the same cash deposit rate as Sicartsa.

If this recommendation is accepted, we will publish the final results of this CCR in the Federal Register.

_____ Agree

_____ Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date